

Army FAIR ACT and A-76 Questions and Answers

Q1. What is the purpose of disclosure of these FAIR Act inventories?

A1. The FAIR ACT requires each Federal agency to make available to the public annually a list of activities that it judges to be not inherently governmental (i.e., commercial).

Q2. What are the implications of a position being posted on the FAIR Act inventory?

A2. Individual positions are not posted. What are posted are activities or functions that the Army performs to carry out its missions.

Q3. What are the implications of functions being posted in the inventory?

A3. It is possible that a portion of the activities included in the inventory may eventually be selected for possible competition. Once an Army activity is selected for A-76 competition, it is required to first develop a performance work statement and quality assurance plan and then issue a request for proposals or invitation for bids from the private sector. As industry develops proposals, the Army organization puts together a most efficient organization, or MEO, for retaining the work in-house. The MEO prepares its own proposal. The best-value contract offer is then compared with the MEO proposal to determine the final award. The contractor's offer must come in at least 10 percent below the government's offer. Otherwise, the savings are not deemed significant enough to outsource the work.

Q4. Will every position listed in the FAIR be competed?

A4. No, absolutely not! As stated by the Office of Management and Budget:

"The inclusion of a function on the agency's inventory of commercial activities does not mean that the agency is required to compete the function for outsourcing. Rather, the FAIR Act in Section 2(d) requires each agency to review its inventory of commercial activities. Presumably, this review would include consideration of outsourcing, consolidation, privatization, other reinvention alternatives or maintaining the status quo. Not all commercial activities performed by Federal employees should be performed by the private sector, though all such activities should be inventoried under the provisions of the FAIR Act and Circular A-76. The decision as to which commercial functions represent "core capabilities," and thus should be retained in-house, remains with the agency head."

OMB Response to Comment 1c, 64 Fed. Reg. 33927, 934 (June 24, 1999).

Q5. How are decisions made concerning which jobs are inherently governmental and which ones not?

A5. The FAIR Act does not apply to individual jobs. It applies to areas or categories of work performed by employees to accomplish Army missions. These areas or categories are called "activities" or "functions." Decisions as to which activities are inherently governmental are made by comparing the activity to the criteria and principles published in Office of Management and Budget Circular A-76 and

Supplemental Handbook. The FAIR Act 1999 inventory located at the Army web site reflects initial decisions made at Army headquarters for purposes of compliance with the FAIR Act.

Q6. Will Army Civilian employees be able to identify their specific positions on this list?

A6. Specific positions are not listed. The Army web site contains a narrative definition of the functions and activity codes. By reviewing these definitions, an employee can figure out which one applies to the purpose of the work performed in his/her position.

Q7. If so, are they qualified to challenge its posting?

A7. Under the FAIR Act, only “interested parties” can “challenge” an agency’s judgement about what to include on its inventory. “Interested parties” include current employees who are actual or prospective bidders to perform the activity. The procedural guidelines for Challenges are contained in the Army web site.

Q8. How do the the OMB reason codes apply to the Army FAIR ACT inventory ?

A8. There are six applicable OMB Reason Codes which specify whether civilian full time equivalent (FTE) positions within a commercial function on the Army inventory have been excluded from competition by reason of law, treaty or international obligation, or otherwise subject to various stages of competition.

Q9. Who made the determinations of what would be on the inventory and who assigned the reason code?

A9. Decisions as to which activities are inherently governmental are made by comparing the activity to the criteria and principles published in Office of Management and Budget Circular A-76 and Supplemental Handbook. The FAIR Act 1999 inventory located at the Army web site reflects initial decisions made by senior leadership at Army headquarters.

Q10. Can these decisions be challenged?

A10. Yes, these decisions can be challenged by “interested parties” as indicated in question 7 above.

Q11. How and when will employees be notified that their position is not inherently governmental or on the list?

A11. Individual positions are not reported on the FAIR Act inventory, and there are no plans to notify employees separately which activities or functions apply to the work they do. However employees can probably figure this out for themselves by reviewing the inventory and the activity definitions as indicated at question 6 above.

Q12. How is this different from A-76?

A12. The FAIR Act inventory reflects a pool of activities which are determined to be not inherently governmental and therefore commercial. Within this pool, Army commanders may determine that some activities should be considered for outsourcing under the procedures required by OMB Circular A-76. Also see the answer to question 3 above.

Q13. Does the Army have a timeline for when these positions will be converted?

A13. Neither the FAIR Act nor OMB Circular A-76 establish any timelines for conversion of work currently performed by civilian employees. However such conversions may occur from time to time as a result of program and budgetary pressures, reorganization and reinvention initiatives, cost competitions under OMB Circular A76, and similar causes.

Q14. Will employees have a chance to appeal whether or not their position is classified incorrectly prior to any decisions to compete it?

A14. The FAIR Act does not affect job classifications of civilian employee positions. It also does not affect the timing of cost comparisons under OMB Circular A-76. See questions 3, 12, and 13 above.

A-76 Questions

Q1. How does the A-76 process work?

A1. Once an Army activity is selected for A-76 competition, it is required to first develop a performance work statement and quality assurance plan and then issue a request for proposals or invitation for bids from the private sector. As industry develops proposals, the Army organization puts together a most efficient organization, or MEO, for retaining the work in-house. The MEO prepares its own proposal. The best-value contract offer is then compared with the MEO proposal to determine the final award. The contractor's offer must come in at least 10 percent below the governments. Otherwise, the savings are not deemed significant enough to outsource the work.

Q2. How many positions have been studied under A-76?

A2. Since 1997 the Army has announced 33, 443 civilian spaces for study.

Q3. How many are planned for study under A-76?

A3. The Army plans to study 66,000 civilian spaces between 1997 and 2003.

Q4. What are those positions and where are they located?

A4. A complete listing of announced studies is on the Army Competitive Sourcing Web page <http://www.hqda.army.mil/acsimweb/ca/ca1.htm>

Q5. What will happen to Army civilians whose positions are ultimately turned over to private contractors?

A5. Affected employees often take other government positions. For example in FY98 the Army reduced 11,000 personnel through VSIP, VERA, and normal attrition. Only 476 were separated through a reduction in force. Contractors are required to give employees right of first refusal if the activity is converted from government to contract.

Q6. How do potential contractors learn about A-76 competitions?

A6. Public Announcement to Congress by DOD and Commerce Business Daily. The ACSIM Competitive Sourcing Web page includes a list of all announced studies as well as a potential bidders report with projected dates for A-76 solicitations.

Q7. How do I find out what positions are affected at my installation?

A7. The local commander notifies the workforce of impending studies. If a function to be studied has more than 50 employees a congressional notification is made prior to a public announcement

FAIR Definitions

1. Activity function code –

These are OMB Commercial Activities Functional Codes used by agencies to report on their inventories of commercial activities. These function codes are published in Appendix 2 of OMB Circular A-76, Revised Supplemental Handbook.

2. OMB FAIR reason codes. There are six applicable OMB Reason Codes which specify whether civilian employee full time equivalent (FTE) positions within a commercial function on the inventory have been excluded from competition by reason of law, treaty or international obligation, or otherwise subject to various stages of competition. The reason codes are:
 - a. A: Indicates that the function is performed by Federal employees and is specifically exempt by the agency from the cost comparison requirements.
 - b. B: Indicates that the activity is performed by Federal employees and is subject to the cost comparison or direct conversion requirements of the Circular and this Supplement.
 - c. C: Indicates that the activity is performed by Federal employees but has been specifically made exempt from the provisions of the Circular and this Supplement by Congress, Executive Order or OMB.
 - d. D: indicates that the function is currently performed by in-house Federal employees and is in the process of being cost compared or converted directly to contract or interservice support agreement performance.
 - e. E: Indicates that the function is retained in-house as a result of a cost comparison.
 - f. F: Indicates the function is currently being performed by Federal employees, but a review is pending force restructuring decisions (i.e., base closure, realignment, consolidation, etc.)
3. Full time equivalents (FTE) – The concept of full time equivalent is used to make cost comparisons under OMB Circular A-76., Revised Supplemental Handbook, Part II. This requires in-house staffing to be expressed in terms of productive work hours, divided by 1776 annual available hours to determine the number of full-time equivalents (FTE) needed.